

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.40 of 2022

***Siddhachit Roy @
Siddhachit Roy*** ***Petitioner***

*Mr. Gyanaloka Mohanty,
Advocate*

-versus-

Rabindra Kumar Mallick ***Opp. Party***

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
06.09.2022**

Order No.

02. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard Mr. Gyanaloka Mohanty, learned counsel for the petitioner.

The petitioner Siddhachit Roy @ Suddhachit Roy has filed this revision petition challenging the order dated 20.12.2021 passed by the learned S.D.J.M., Anandapur in 1.C.C. Case No.165 of 2013 in rejecting the petition filed by the learned counsel for the accused (petitioner) for correcting the recording of the petitioner's evidence who was examined as D.W.1.

The petitioner is facing trial for commission of an offence under section 138 of the N.I. Act and after the

closure of the evidence from the side of the complainant and recording of the accused statement, the petitioner examined himself as D.W.1. In fact, he filed the evidence affidavit whereafter he was examined further by his own counsel in examination in-chief and then he was cross-examined by the learned counsel for the complainant-opposite party. After the cross-examination was over, it seems that the evidence was read over to the petitioner and explained and thereafter he signed the deposition sheet on each page on 08.12.2021. The counsel for the petitioner filed a petition on 15.12.2021 in the trial Court indicating therein that some questions were put to him by the counsel for the complainant and correct answers were given but the same has been wrongly recorded by the Court and therefore, a prayer was made to correct the recording of the evidence.

Learned counsel for the complainant filed objection to such petition.

After hearing both the parties, the learned trial Court has been pleased to hold that after recording of evidence, the same was read over and explained to D.W.1 and after finding it to be true and correct, he has put his signature and therefore, the prayer to make changes in the evidence cannot be done without bringing D.W.1 (petitioner) to the dock and accordingly, the petition was rejected.

Mr. Gyanaloka Mohanty, learned counsel appearing for the petitioner contended that after receipt of the certified copy of the deposition, it came to the notice of the learned counsel for the accused (petitioner) about the wrong recording made by the Court and immediately the petition was filed for correcting the same. It is submitted that the petitioner is a graduate and it was his duty to immediately point out the same to the learned trial Court while putting his signature but he could not verify the evidence thoroughly when he put his signature and for his laches, he should not be deprived of the opportunity in bringing it to the notice of the Court regarding wrong recording of his evidence which has far reaching consequences.

Section 278 of Cr.P.C. deals with procedure in regard to the evidence when it is completed and it states, inter alia, that as the evidence of each witness taken under section 275 or section 276 of Cr.P.C. is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected and it is further provided that if the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Presiding Officer may, instead of correcting the evidence, make a memorandum thereon of the

objection made to it by the witness and shall add such remarks as he thinks necessary. It is further provided that if the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

Sub-section (3) of section 278 of Cr.P.C. is not attracted in this case since the petitioner is a graduate and he gave the evidence affidavit in English and after he deposed, his deposition was also recorded in English and he went through the same and put his signatures on each page of the deposition sheet.

All the Courts whether civil or criminal have obligation to read over the deposition to the witness before he is called upon to affix the signature. The object of reading over the depositions is to obtain an accurate record from the witness of what he really means to say and to give him an opportunity of correcting the words which the Magistrate has taken down. The object of the reading over prescribed by this section, is not to enable the witness to change his story but to ensure that the record faithfully and accurately embodies the gist of what the witness actually said. The section is not intended to permit a witness to resile from his statement in the name of correction. The object underlying section 278 of the

Code is to obtain an accurate record of what a witness really means to say and to give him an opportunity of correcting his evidence taken down by the Court, if any. Where the certificate of the Magistrate endorsed on the deposition sheet states that the deposition was read out to the witness and that the witness admitted it to be correct, the Court is bound to accept this as correct under section 80 of the Evidence Act until it is proved to be untrue. Before a deposition is closed, a witness is given an opportunity of explaining and correcting any contradictions which it may contain and the statement which the witness finally declares to be the true one and that statement only must be taken to be the statement which the witness intended to make.

There is no dispute that section 315 of Cr.P.C. provides that any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him for the same trial.

In the case in hand, when the accused (petitioner) decided to examine himself as D.W.1 to substantiate his defence plea and to create doubt in the veracity of the accusation brought on record by the complainant either by way of oral evidence or documentary evidence and filed the evidence affidavit and then he was examined further in-chief and cross-

examined and after his cross-examination is over, he was asked to go through his deposition sheet and put his signature on each page of the deposition sheet, he never raised any objection about of any wrong recording. The contention of the learned counsel for the petitioner that everything was done in a hurried manner and the petitioner could not get time to go through the evidence minutely and therefore, the evidence should be corrected is not acceptable. The correction, which has been sought for in the evidence is completely different than what evidence has been recorded. Therefore, it would be too risky to allow further examination of the petitioner as D.W.1 and permit him to make correction in the evidence already recorded. However, if any, new fact is there with the petitioner to be deposed to prove his case which he has inadvertently left out, his counsel can file an application for recall of petitioner to depose only those aspects and in the recall petition, specific questions likely to be put to D.W.1 should be mentioned and the same shall be considered by the learned trial Court and, if it is found to be relevant, just and proper and the Court decides that the recalling of D.W.1 would be essential for the just decision of the case then the Court is at liberty to allow such prayer for recall of D.W.1 but not for correcting the evidence which he has already given either in the chief examination or in

the cross-examination.

With the aforesaid observations, the criminal revision petition is disposed of.

Urgent certified copy of this order be granted on proper application.

(S.K. Sahoo)
Judge

RKM

